

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Information Technology Department)	File No. SLD-245592
State of North Dakota)	
Bismarck, North Dakota)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: April 24, 2002

Released: April 24, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the Information Technology Department of the State of North Dakota (North Dakota), Bismarck, North Dakota, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator or USAC).¹ North Dakota requests review of the denial of an application filed by North Dakota School Net 2001 for Funding Year 4 of the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny North Dakota's Request for Review. To the extent that North Dakota requests a waiver of the Commission's rules, we deny that request as well.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit

¹ Letter from Curtis Wolfe, Information Technology Department, State of North Dakota, filed on behalf of applicant North Dakota School Net, to Federal Communications Commission, filed October 18, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁵ In the FCC Form 471 instructions, SLD has clearly set forth its standards for processing a FCC Form 471 application.⁶ Specifically, the FCC Form 471 instructions state that if a school or library does not provide the information requested, "the processing of your application may be delayed or your application may be returned to you without action."⁷

3. The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁸ Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.⁹ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹⁰ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 4, the window closed on January 18, 2001.¹¹

4. Applicants may file their FCC Form 471 electronically.¹² In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 4, applicants who filed electronically must also have completed and mailed to SLD the Item 21 description of services, and a paper copy of the Block 6 Certification, completed and signed.¹³ A commitment of support is contingent upon the timely filing of the applicant's completed FCC Form 471.¹⁴ Prior to Funding Year 4, the deadline by which these items had to be received by

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions). *See also* 47 C.F.R. § 54.504(c).

⁷ Form 471 Instructions at 2.

⁸ 47 C.F.R. § 54.507(c).

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.507(g).

¹¹ SLD will process in-window applications that have been postmarked by January 18, 2001. *See* SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for Funding Year 4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 4 Minimum Processing Standards).

¹² Form 471 Instructions at 4-5.

¹³ Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000).

¹⁴ Form 471 Instructions at 3-6.

SLD to be considered within the window was later than the deadline for the filing of the FCC Form 471, so that applicants could file electronically on the last day of the filing window, and mail their certifications and attachments thereafter. However, because in previous years the delivery of a number of applications was significantly delayed by the postal service, SLD, starting in Funding Year 4, directed that all FCC Forms 471 would be deemed filed when postmarked, rather than when received by SLD.¹⁵ This procedural change protects applicants from excessive mail delays. Consequently, SLD notified all potential applicants that all Block 6 certifications and Item 21 attachments must also be postmarked no later than the close of the filing deadline.¹⁶

5. North Dakota electronically filed its FCC Form 471 with SLD on January 18, 2001.¹⁷ Subsequently, North Dakota mailed copies of its Block 6 certification page, along with the Item 21 attachments, to SLD.¹⁸ The Block 6 certification page and Item 21 attachments were postmarked on February 9, 2001.¹⁹ On October 9, 2001, SLD informed North Dakota that its “application, Block 6 Certifications, and/or Item 21 attachments were postmarked after the 2001-2002 filing window closed at 11:59 p.m. EST on January 18, 2001.”²⁰

6. On appeal to the Commission, North Dakota concedes that the Block 6 certification page was filed after the close of the filing window. As a result, the entire application was processed as filed outside the window.²¹ North Dakota asserts, as a justification for its untimely filing, that the instructions were unclear that the Block 6 certification page needed to be postmarked by January 18, 2001.²² In the alternative, North Dakota requests a waiver of the Funding Year 4 application window.²³

7. Based on our review of the record, we find that North Dakota filed its Block 6 certification page outside the filing window. SLD records indicate that the Block 6 certification page was postmarked on February 9, 2001, and was therefore ineligible to be considered within the filing window.²⁴ Furthermore, we do not agree that the instructions were unclear about the

¹⁵ See SLD website, What’s New (November 2, 2000) <http://www.sl/universalservice.org/whatsnew/110200.asp#110200>.

¹⁶ *Id.*

¹⁷ FCC Form 471, North Dakota School Net, filed January 18, 2001 (North Dakota Form 471).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jerry Fossum, North Dakota School Net, dated October 9, 2001.

²¹ See Request for Review.

²² *Id.*

²³ *Id.*

²⁴ See North Dakota Form 471.

filing deadline. The FCC Form 471 instructions refer applicants to the SLD Client Service Bureau or its website for annual filing deadline dates.²⁵ The website, in turn, explicitly informed applicants:

Year 4 features NEW and FIRM filing requirements: The January 18 deadline is a POSTMARKING deadline. In order to make sure your application is in the window, all manually submitted materials must be postmarked no later than January 18. Unlike Year 3, all materials associated with the Form 471 have a January 18 deadline: the 471 Form itself (whether electronic or paper); the Block 6 certification for the Form 471 with an original signature by the authorized person; all attachments for Item 21; [and] the Block 5 certification of Form 470 filed for Year 4 (and which is cited in a Year 4 Form 471) with an original signature by the authorized person.²⁶

8. In addition, SLD further notified applicants about the postmark deadline: (1) through a November 6, 2000 letter mailed to 61,000 applicants, including previous applicants;²⁷ (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;²⁸ and (3) by posting several other notifications in different areas on the SLD website.²⁹ We therefore reject North Dakota's argument concerning notice. We find that North Dakota's complete application was not timely filed and deny the instant Request for Review. Because we find that North Dakota's Block 6 certification page was filed outside the filing window, it is not necessary for us to consider whether the Item 21 attachments were timely filed.

9. To the extent that North Dakota requests a waiver of the Commission's rules, we conclude that North Dakota has not demonstrated a sufficient basis for waiving the Commission's rules. North Dakota argues that there is good cause to waive the Commission's rules based on: 1) the first-time nature of its application and the availability of electronic filing for the first time; 2) the late completion of electronic document submission that would not have allowed sufficient time to travel to the post office; 3) the complex nature of its application; 4) the

²⁵ Form 471 Instructions at 4 ("The opening and closing dates of the application window are established and announced each year by the Fund Administrator. See the SLD web site for details, <www.sl.universalservice.org> or call the SLD Client Service bureau at 888-203-8100.").

²⁶ See SLD website, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

²⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to applicants, dated November 6, 2000. SLD records indicate that a copy of the letter was mailed to Wayne Wermager at North Dakota School Net. North Dakota identified Wayne Wermager as its authorized person in its FCC Form 471 application and Wayne Wermager signed the Block 6 certification page from North Dakota's FCC Form 471. See North Dakota Form 471.

²⁸ "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

²⁹ See, e.g., SLD website, Program Description for the 2001-2002 Funding Year (November 2000) at 1, 4-5, 14-15 <<http://www.sl.universalservice.org/data/doc/ProgramDescriptionY4.doc>>; Funding Year 4 Minimum Processing Standards at 3.

difficulty in receiving bids from its primary vendor; 5) the allegedly overwhelming and unclear nature of the rules for filing completed applications for Funding Year 4; and 6) the detrimental impact the denial may have on the public schools and libraries in the state of North Dakota.³⁰

10. A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³¹ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.³²

11. We are not persuaded that any of North Dakota's justifications rise to the level of good cause sufficient for the Commission to waive its rules. First, this is not the first year in which applicants could file FCC Form 471 applications electronically.³³ In addition, SLD records indicate that North Dakota filed applications with SLD in Funding Years 1, 2, and 3.³⁴ Second, we have concluded that it is incumbent upon applicants to anticipate unexpected, yet reasonably foreseeable circumstances.³⁵ As a result, due to the lengthy nature of the application, North Dakota should have reasonably anticipated that it was imperative to begin the application process early, in order to allow adequate time to complete the application process before the deadline. Third, the size and complexity of the application that an applicant chooses to submit to

³⁰ See Request for Review; Letter from Curtis Wolfe, State of North Dakota, Information Technology Department to Mark Seifert, Federal Communications Commission, dated January 16, 2002.

³¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³² *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

³³ See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (FY 3 Form 471 Instructions); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998) (FY 2 Form 471 Instructions). In addition, the Bureau has previously determined that the fact that an applicant is "new" to the application process does not create the special circumstances necessary to allow waiver of the Commission's filing deadline. See *Request for Waiver by Netherlands Reformed Christian School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-270064, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 21951 (Com. Car. Bur. 2001) (*Netherlands Reformed Christian*).

³⁴ See FCC Form 471, North Dakota School Net, filed April 13, 1998 (Funding Year 1 File No. SLD-3988); FCC Form 471, North Dakota School Net, filed April 5, 1999 (Funding Year 2 File No. SLD-144137); FCC Form 471, North Dakota School Net, filed January 18, 2000 (Funding Year 3 File No. SLD-185696); FCC Form 471, North Dakota School Net, filed January 19, 2000 (Funding Year 3 File No. SLD-188745).

³⁵ See *Request for Waiver by Scottsdale Horizons School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 654 (Com. Car. Bur. 2002) ("Applicants that wait until near the end of the application process risk such 'unexpected but reasonably foreseeable' delays, and applicants are therefore encouraged to file their forms as early as possible."); *Request for Waiver by Stephen/Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879 (Com. Car. Bur. 2001) ("Although circumstances such as inclement weather may be unexpected, they are generally reasonably foreseeable, and applicants therefore 'should build into their schedules a reasonable margin of error in anticipation of circumstances which may cause delay.'")

the Administrator does not establish good cause to waive the Commission's rules.³⁶ Fourth, as we have previously held in similar circumstances, North Dakota's difficulty obtaining bids from its primary vendor also does not offer sufficient basis for waiver.³⁷ Fifth, the Bureau has declined to waive the Commission's rules based on allegations that its rules and USAC procedures were confusing.³⁸ Finally, as we have held in the past, North Dakota's assertion that denial of its application may have a detrimental impact on schools and libraries does not create the special circumstances or particular facts that warrant a waiver of the Commission's rules.³⁹ As a result, none of these arguments rises to the level of good cause necessary to justify waiving our rules.

12. In requesting funds from the schools and libraries universal service support mechanism, the Bureau has found that the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.⁴⁰

³⁶ See, e.g., *Request for Review by Central Minnesota Computing Center, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-143701, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 7110, 7115 (Com. Car. Bur. 2001) ("Where schools and libraries choose to apply as a consortium to obtain the resulting advantages, the consortium must be prepared to accept the associated burdens as well.").

³⁷ See, e.g., *Request for Waiver by Tuxedo Park, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Billed Entity No. 11350, CC Docket Nos. 96-45 and 97-21, Order, DA 02-88 (Com. Car. Bur. rel. Jan. 14, 2002) (declining to grant a waiver of the Funding Year 3 application window because the applicant was unable to obtain the Service Provider Information Number (SPIN) from two of its service providers).

³⁸ See *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent its late filing was "due to misunderstanding of the program rules"); see also *Request for Waiver by E-Rate Central, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-33699, 84909, 1275, 84495, 13397, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 16451 (Com. Car. Bur. 2001) (denying waiver request based upon "general applicant confusion regarding the rules of the program"); *Request for Review by North Hills School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-90933, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2182 (Com. Car. Bur. rel. October 14, 1999) (denying appeal on the grounds that delay caused by complexity of the filing process and difficulty in understanding a funding denial were an "insufficient basis" for waiver of a deadline).

³⁹ See *Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183124, CC Docket Nos. 96-45 and 97-21, Order, DA 02-227 (Com. Car. Bur. rel. Jan. 30, 2002) (denying a request for waiver of the Commission's rules based on the assertion that denial would cause the applicant hardship); *Request for Review by Lansingburgh Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-109845, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 6999 (Com. Car. Bur. 1999) ("To simply advert...to its limited resources and the needs of its students, does not distinguish its situation from other applications the SLD must process each funding year in accordance with its filing deadlines.").

⁴⁰ See *Request for Review by Winnebago Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-196317, 196417,

The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Moreover, as we explain above, applicants were on notice well before the close of the filing window in Funding Year 4 that certifications for FCC Forms 471 must be postmarked no later than the close of the filing window.⁴¹

13. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.⁴² In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. An applicant must further take responsibility for the actions of those employees or agents to whom it gives responsibility for submitting timely and proper requests for discounts on its behalf. We therefore find no basis for waiving the filing window deadline.

14. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Information Technology Department, State of North Dakota, Bismarck, North Dakota, on October 17, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

196438, 196460, 196469, 196478, 196481, 196491, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 20966 (Com. Car. Bur. 2001), para. 8.

⁴¹ See *supra* paras. 7, 8.

⁴² See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), para. 8.